



Wake County Board of Adjustment

Meeting Agenda

Tuesday, February 11, 2020 – 9:00 a.m.
Wake County Justice Center – Room 2700
301 S. McDowell St. – Raleigh, N.C.

1. Call to Order – Mr. Brenton McConkey
2. Approval of Minutes of the December 10, 2019 meeting
3. **Approval of Written Decisions:**
 - **PLG-ZV-001751-2019** – Variance request for an Exception to extend operating hours for a neighborhood/convenience-oriented retail use from the required 7:00 a.m. to 9:00 p.m. limit to 24 hours per day
Voting members: Mr. McConkey, Mr. Mial, Mr. Haq, Mr. Engelken, and Mr. Collins
 - **PLG-ZV-001752-2019** – Variance request to reduce the required corner side yard building setback for an existing single-family dwelling.
Voting members: Mr. McConkey, Mr. Mial, Mr. Haq, Mr. Engelken, and Mr. Goebel
 - **PLG-A-001818-2019** - The petitioner is appealing the determination of planning staff, as allowed by Article 19-41 *Appeals of Administrative Decisions*, that the allowed encroachment into the 25-foot tree and vegetation protection zone was not approved in error.
Voting members: Mr. McConkey, Mr. Mial, Mr. Haq, Mr. Engelken, and Mr. Collins
4. **PLG-SU-001889-2019** - The petitioner is requesting special use permit approval to operate a Bed and Breakfast Homestay within a residential dwelling.
5. **PLG-A-002008-2020** - The petitioner is appealing the determination of planning staff, as allowed by Article 19-41 *Appeals of Administrative Decisions*, that his nonconforming mobile home park has lost legal nonconforming status for 17 lease spaces.
6. Planning, Development, and Inspections Report
7. Adjournment



Planning, Development & Inspections

TEL (PLANNING) 919 856 6310
TEL (INSPECTIONS) 919 856 6222

A Division of Community Services
P.O. Box 550 • Raleigh, NC 27602
www.wakegov.com

MINUTES OF REGULAR MEETING TUESDAY, FEBRUARY 11, 2020 (9:00 a.m.)

Wake County Board of Adjustment

Wake County Justice Center
300 S. Salisbury St., Room 2700
Raleigh, North Carolina

Members Present: (9) Mr. Brenton McConkey (Chair), Mr. Don Mial (Vice Chair), Mr. Waheed Haq, Mr. DeAntony Collins, Mr. Dustin Engelken, Mr. Jeffrey Goebel, Mr. Will Barker, Ms. Sheree Vodicka, Mr. John Barker

Members Absent: (0)

County Staff Present: (7) Ms. Celena Everette (Planner), Mr. Steven Finn (Land Development Administrator), Ms. Beth Simmons (Community Services Operations Supervisor), Ms. Loretta Alston (Clerk to the Board), Ms. Jenny Coats (Department Business Manager), Mr. Geoffrey Pearson (Code Enforcement Program Manager)

County Attorney Present: (1) Mr. Ken Murphy (Senior Assistant County Attorney)

Guests: (7) Mr. John Burns (Attorney), Mr. Brian Edlin (Attorney), Ms. Monica Nelson (applicant), Mr. John Nelson (applicant), Mr. James Wallace (owner), Mr. Keith Heckman (owner), Mr. Dennis Levy (owner), Ms. Beth Setzer (owner), Mr. Scott Overbee (appellant), Ms. Dawn Bailey (owner)

- 1. Meeting called to order:** Mr. McConkey called the meeting to order at 9:03 a.m.
- 2. Approval of Minutes of the December 10, 2019 Meeting:** Mr. McConkey made a motion to approve the December 10, 2019 meeting minutes as presented. The motion was seconded by Mr. Mial and the minutes were approved unanimously.
- 3. Approval of Written Decision Regarding PLG-ZV-001751-2019:** Mr. McConkey noted that all five original voting members present were Mr. McConkey, Mr. Mial, Mr. Haq, Mr. Engelken, and Mr. Collins. Mr. McConkey made a motion to approve the written decision as drafted. The motion was seconded by Mr. Mial. By a vote of 5-0, the written decision was adopted.

Approval of Written Decision Regarding PLG-ZV-001752-2019: Mr. McConkey noted that all five original voting members present were Mr. McConkey, Mr. Mial, Mr. Haq, Mr. Engelken, and Mr. Goebel. Mr. Engelken made a motion to approve the written decision as drafted. The motion was seconded by Mr. Mial. By a vote of 5-0, the written decision was adopted.

Approval of Written Decision Regarding PLG-A-001818-2019: Mr. McConkey noted that all five original voting members present were Mr. McConkey, Mr. Mial, Mr. Haq, Mr. Engelken, and Mr.

Collins. Mr. McConkey made a motion to approve the written decision as drafted. The motion was seconded by Mr. Engelken. By a vote of 5-0, the written decision was adopted.

4. PLG-SU-001889-2019 - The petitioner requested special use permit approval to operate a Bed and Breakfast Homestay within a residential dwelling.

Before the case was heard, Mr. McConkey stated that Mr. Goebel indicated he had a potential conflict of interest with this case and therefore is recused from this item. Mr. Haq also disclosed he had previously worked with one of the attorneys on this case, but that it would not pose an issue rendering a decision.

Voting Members (5)

The voting members were identified as: Mr. Brent McConkey, Mr. Don Mial, Mr. Haq, Mr. Will Barker, and Mr. Dustin Engelken.

Documentary Evidence

Staff Report, PowerPoint presentation, Special Use Application with supporting documents were accepted into evidence by Mr. McConkey

Testimony of Staff

Wake County Planning staff member, Mr. Geoffrey Pearson, was duly sworn. Mr. Pearson began by introducing himself and the title of the case before the board. Mr. Pearson asked that the Staff Report (Appendix 1), PowerPoint presentation (Appendix 2), the Special Use Application (Appendix 3), be accepted as evidence into the record.

Mr. Pearson stated that the petitioner is requesting special use approval to operate a bed and breakfast homestay within a residential dwelling. The applicant in this case is Ms. Monica Nelson and the property owners are John and Monica Nelson. The Nelsons were being represented by attorney, Mr. John Burns.

Mr. Pearson stated that the subject site is located at 925 Edgewater Drive, which is in the southern part of the county, near Rand Road and Lake Benson. The property is lot # 7 of the Heron Point Subdivision and is also located in the Panther Branch Township. The site is zoned Residential-80 Watershed and is located in the Critical Area of the Swift Creek Watershed. The surrounding properties are residentially zoned and developed.

Mr. Pearson stated that on August 22, 2019 the Wake County Planning Division received complaints regarding the operation of a short-term rental home from the subject property. During a phone conversation with the property owner, Mr. Pearson verified that the residential single-family home was being marketed through the online website Air BnB as a short-term rental house. The owners were notified that this type of operation would be defined as a Bed & Breakfast Homestay under Article 21 of the Wake County Unified Development Ordinance, and that the use required special use approval by the Board of Adjustment as classified under Article 4 of the UDO. The applicant submitted a Special Use Permit Application on November 4, 2019.

Mr. Pearson stated that notification letters were mailed to adjacent property owners on January 23, 2020. A public hearing placard was placed on the property on January 22, 2020.

Mr. Pearson informed the Board that the Nelsons' short-term rental falls in the category of a Bed and Breakfast Homestay as defined by Article 21, Section 21-11 of the Wake County Unified Development Ordinance. The Ordinance defines a Bed and Breakfast Homestay as the use of part

of a dwelling to provide short-term (i.e. not more than seven days) lodging to guests for compensation, with or without the provision of meals to overnight guests, where no more than two guest rooms are involved.

Mr. Pearson stated that a Bed and Breakfast Homestay is permitted as an accessory use to a residential dwelling, if there are no more than two guest rooms used in connection with the short-term rental. Mr. Pearson presented a floorplan of the Nelsons' two-story home and highlighted on the Second Floor Plan, the applicant proposes to use the two bedrooms labeled "Rebecca" and "Peyton" as the rooms for the short-term rental.

Mr. Pearson stated that Section 4-74 of the UDO provides the following specific conditions for the operation of the Bed & Breakfast:

- 4-74-1 requires no substantial changes may be made to the exterior appearance of the structure or to the site that would alter the property's residential character. Mr. Pearson stated that the applicant will not be making any changes to the exterior appearance of the home.
- 4-74-2 requires that guest stays are limited to 7 consecutive days; Mr. Pearson stated that the applicant attests that guest stays will not exceed 7 days.
- 4-74-3 requires the operator of the bed and breakfast homestay must occupy the dwelling as a principal residence; Mr. Pearson stated that the applicant has certified that this home is their primary residence and will remain so in the future. AND
- 4-74-4 states meals may be provided to overnight guests only, and no cooking facilities may be provided in guest rooms; Mr. Pearson stated that the applicant attests that there will be no meal service provided, and no cooking facilities are to be located in any guest rooms.

Mr. Pearson presented the site plan for the property and highlighted the following:

- The home is directly along Edgewater Drive, and no changes are proposed to the existing driveway.
- The residential dwelling is served by an individual water supply system and an individual on-site septic system. The septic system is sized to accommodate up to 10 total individuals of the 5-bedroom dwelling. Therefore, up to 2 guests can stay in each of the two guest rooms. The applicant certifies that no more than two guest rooms will be utilized, and therefore the existing system is suitable for the proposed operation.
- The UDO requires a Bed & Breakfast Homestay to provide off-street parking at a rate of one space per rental unit. The applicant proposes to utilize the existing driveway to satisfy the additional parking requirement of 2 spaces.
- The property is located in the Swift Creek Non-Urban Area/Water Supply Watershed as shown on the Wake County Land Use Plan: General Classifications Map. The proposed project is consistent with the Land Use Plan.

Mr. Pearson presented two photographs of the property and a brief video of the property and adjacent areas.

Mr. Pearson stated that staff recommends that, if the BOA reaches positive conclusions on all of the required findings, that it approves the special use request subject to the conditions identified in the staff report.

Mr. McConkey asked if there were any questions for staff.

Mr. Haq inquired if there was additional, similar activity related to the complaints after August 22, 2019. Mr. Pearson stated that once the complaint was received and verified, staff met with the

owners to discuss their options, and after that pre-submittal meeting, the number of complaints diminished.

Mr. Haq inquired of parking at the site and if there were any ordinances/regulations to restrict parking in the driveway related to the number of cars and/or time of day. Mr. Pearson stated that all street parking for residential must be in the driveway; parking on the front lawn or in the front yard is not allowed.

Testimony of the Petitioner

Before the case was presented by the Petitioner, the following individuals were duly sworn:

1. John Nelson, Property Owner, 925 Edgewater Dr, Garner, NC 27529-7150
2. Monica Nelson, Property Owner, 925 Edgewater Dr, Garner, NC 27529-7150

Mr. John Burns, (3700 Glenwood Ave, Raleigh, NC) represented the petitioner. Mr. Burns gave a brief overview of the case. Mr. and Mrs. Nelson have four children, three of which are not living in the home. The Nelson's recently opened a restaurant and saw an opportunity to supplement their income by providing short-term rentals of the empty rooms in their home. He noted that the Nelson's do not rent the entire home and they are always present in the home when guests are there. The Nelson's began listing the home on the Airbnb website and renting rooms in April 2019. They were informed by Wake County that they were in violation of the UDO and that they needed a special use permit to operate in such a way. The Nelson's filed an appeal and simultaneously applied for the special use permit, rendering enforcement of the action letter stayed. Mr. Burns stated that the Nelson's have complied with the county's requirements to follow the UDO and the special use permit requested meets all the requirements for approval for a bed and breakfast homestay. Per the application, there will be no change to the outside of the building, they will not rent more than two rooms, and they will not have guests staying for more than seven days.

Mr. Burns outlined the five findings the board will be basing its decision upon. The first finding cited was that the proposed development will not materially endanger the public health and safety. Mr. Burns noted that the Nelson's will testify to how many times they rent and to how many residents. Mr. Burns also stated that the provision of services and utilities will not be affected nor overtaxed as stated in Mr. Pearson's staff report. Mr. Burns stated that the Nelson's will testify that there will not be any ground disturbances on the property and that public water supply will not be adversely affected.

Mr. Burns stated that of the five findings, the most opposed and discussed will be if the permit and proposed use substantially injures the value of adjoining property and will the proposed use be in harmony with the area which it is located. Mr. Burns feels that community conflicts are governed by the homeowner's association board and that whether the property violates the UDO is the issue at hand for this board.

The Applicant introduced two exhibits at the quasi-judicial hearing, both of which were accepted into the record by the Board: a photograph taken on September 6, 2019 showing two vehicles parked on the street along Edgewater Drive; and a photograph taken on September 23, 2019 showing three vehicles parked on the street along Edgewater Drive.

Mrs. Nelson provided the following testimony:

- The Nelson's decided in April 2019 to pursue the opportunity to make additional income from providing their home on Airbnb, in order to finance a recent business venture of opening a restaurant.
- If the special use permit is granted, the Nelson's plan to rent out two bedrooms, as per the UDO. They also plan to comply with any additional conditions set forth by Wake County.
- In addition to the two cars owned by the Nelson's, there will be no more than two additional cars in the driveway. Guests will be instructed to park in the driveway. Mrs. Nelson stated that occasionally she and/or guests (not renters) have parked temporarily on the street, as have neighbors in the community.
- Mrs. Nelson stated that the additional renters/guests have not increased the amount of traffic, and additionally stated that seven different garbage-collection companies add to traffic in the neighborhood.
- Mrs. Nelson stated that when her grown children were in the home and were of driving age, there were five cars all parked in the driveway.
- Mrs. Nelson stated that they will not be making any changes to the impervious surfaces on the property and will not be making any changes to the exterior of the home. With the additional income they have earned thus far, they have made improvements to the landscaping and grassy area but have not cleared any ground or moved any soil.
- Mrs. Nelson stated that they are home during guest stays, except for errand runs or dinner plans they may have. Mrs. Nelson stated that she works from home during the day and teaches at night. Mrs. Nelson stated that her youngest child is eleven years old and is never home alone with the guests.
- Mrs. Nelson stated that Airbnb does a background check in sex offender registries on all guests and the homeowners reserve the right to deny any guests that they do not feel comfortable having in the home.
- The Nelson's have not received formal written communication from the homeowner's association. Mrs. Nelson stated that the complaint was filed shortly after a disagreement with neighbor and police officer, Mr. Heckman, and after she filed a complaint with Raleigh Police Department.
- Mrs. Nelson stated that they have received all five-star reviews on Airbnb and they pride themselves on providing high standards. They have a minimum three-night stay requirement (\$1000 minimum) to stay in the Nelson's home.
- From April 2019 to December 31, 2019, the Nelson's have rented for 75 overnight stays.
- Mrs. Nelson stated that guests do not have any cooking facilities in the bedroom but do have full use of the kitchen. The Nelson's do not provide meals.

Questions asked of petitioners –

Mr. McConkey asked if there was a limit on the number of guests that could occupy the two bedrooms for rent, if the maximum for the house is ten. Mrs. Nelson stated that two adults may stay in the rooms, bringing the total to seven people in the home. Mr. Burns clarified that if the adults brought any children that would stay in the room with them, that could increase the number of guests to up to ten.

Mr. Haq asked if the Nelson's stopped renting rooms after they were notified of the complaint. Mr. Burns stated that they were not required to stop renting because the enforcement action was stayed, pending the appeal and pending the application for the special use permit.

Mr. Haq asked if there have been any incidents where neighbors have felt threatened or insecure. Mrs. Nelson stated that she has heard no complaints and there have not been any calls to the home

from the sheriff's department. Mrs. Nelson stated that they did receive complaints when they arrived at their annual homeowner's association meeting, however they have not received any official written documentation from the HOA of violations.

Mr. McConkey asked if there were any particular ground rules that are communicated to guests. The Nelsons stated that they have a home manual that includes items such as HOA rules, noise ordinances, speed limits, etc.

Public Hearing

Attorney Brian Edlin (1951 Clark Ave, Raleigh, NC) appeared at the quasi-judicial hearing representing the Heron Point subdivision, opposing the Application. The following individuals testified at the quasi-judicial hearing in opposition to the Application: James 'Jay' Wallace, who owns a residence at 1004 Edgewater Drive around the corner from the Subject Property; Keith Heckman, who owns a residence at 928 Edgewater Drive across the street from the Subject Property; Denis Levy, who owns a residence at 924 Edgewater Drive across the street from the Subject Property; Beth Setzer, who owns a residence at 1005 Edgewater Drive around the corner from the Subject Property; and Dawn Bailey, who owns a residence on 908 Edgewater Drive around the corner from the Subject Property.

Mr. Edlin and those opposed to the Application introduced the following exhibits at the quasi-judicial hearing, each of which was accepted into the record by the Board: seven photographs of the Subject Property and Edgewater Drive in front of the Subject Property taken in Summer 2019 from Mr. Heckman's home security system across the street from the Subject Property; a copy of an advertisement on Airbnb.com for the Subject Property; a copy of the recorded Declaration of Covenants, Conditions and Restrictions for Heron Point Subdivision; and four photographs taken of the Subject Property and Edgewater Drive in front of the Subject Property on December 6, 2019, December 25, 2019, June 20, 2019, and November 7, 2019.

Mr. Jay Wallace, as a member of the HOA board from Heron Point and citing an Article from the HOA declaration, stated that he feels the proposed use as transient housing is not permitted and is not in the character of the community.

Mr. Keith Heckman provided testimony that the current advertisement on the Airbnb website states that it is a multiple family retreat on Lake Benson and allows the rental of five bedrooms for ten guests. Mr. Heckman also stated that he has witnessed up to 17 people on the property at a given time and that the applicants have parked on the street to allow guests use of their driveway. He also stated that he feels the proposed use as transient housing is not in the character of the community.

At 9:48am, Mr. Haq recused himself from the case due to personal reasons. Mr. Murphy stated that Mr. Haq has realized that he personally knows one of the interested parties and is concerned that the relationship may impact his ability to be an impartial adjudicator of the matter. Mr. Haq's recusal was accepted, and Mr. McConkey identified Mr. John Barker as the alternate member assigned to the case.

Mr. Engelken asked staff for clarification regarding use after the appeal was filed and the possible approval today of the special permit. Mr. Pearson stated that once the appeal was filed, the enforcement of the violation to the UDO was stayed, until the applicants applied for the special use permit. If the applicants continue to violate the UDO after the special use permit is issued, it would be investigated, and the permit would be revoked if substantiated.

Mr. Dennis Levy presented various photographs and presented testimony of the increased traffic flow and noise levels in the neighborhood coming from the applicant's property.

Ms. Beth Setzer presented testimony that she has noticed an increase in traffic and excessive speeding. She also testified that she has witnessed guests access the nearby lake from other properties. Mr. Setzer expressed concern that although the renter is vetted by Airbnb, any guests they bring are not.

Ms. Dawn Bailey testified that she witnessed a stranger who did not live in the neighborhood, walking around the neighborhood taking photographs with homes. Ms. Bailey stated that she knew the stranger did not live in any of the homes, so they requested that she leave, after which Ms. Bailey says that she witnessed the stranger enter the Nelson's home.

Mr. Burns asked Mr. Wallace if he has seen cars parked on the street at other homes in the neighborhood, Mr. Wallace stated that he had. Mr. Burns asked Mr. Wallace, who stated he is the Treasurer of the HOA board, what the mechanism in the community for the enforcement of rules violations. Mr. Wallace stated that the board has never fined anyone, but rather has used community involvement and communication to resolve issues.

Mr. Burns asked Mr. Heckman if he has a disagreement with the applicants, Mr. Heckman stated that he had. Mr. Burns asked if Mr. Heckman operated a landscaping business, Mr. Heckman stated that he did not. Mr. Burns asked if other neighbors have groups of people visit for a couple of hours during the day, Mr. Heckman confirmed that they do.

Mr. Burns referenced a photograph presented by neighbors and asked the Nelsons to elaborate on the many guests seen around Christmastime 2019. Ms. Nelson stated that they offered their home to a family of a Wake County Hospice patient and allowed family to visit on that day. Mr. Burns presented a series of photographs showing cars parked on the street, Mr. and Mrs. Nelson confirmed that those guests were not visiting them.

Mr. Burns asked the applicants if they planned to comply with Wake County decisions regarding this permit, by which Mrs. Nelson stated they would and that if the special use permit was granted, they would update their Airbnb listing immediately.

Mr. McConkey asked the Nelson's if they were prepared to comply with the rule of only two bedrooms for rent and if that is violated the special use permit would be revoked, Mrs. Nelson agreed they would.

Mr. Edlin provided closing remarks by stating that the opposition believe the applicants are currently in violation of the UDO by providing five bedrooms for rent, per the Airbnb that was printed on the day of the hearing. Additionally, Mr. Edlin stated the following in relation to the findings the board must make:

- Whether the use will materially endanger the public health and safety. Mr. Edlin stated that currently the Nelsons are renting to around 50-70 different people per year and that caused an increase in traffic, parking along roadways, trespassing, and unknown person in the neighborhood.
- Whether the use will endanger the provision of services and utilities. Mr. Edline stated that the current permit allows for five bedrooms, where currently they are living in the basement.

- Whether the use will substantially injure the value of adjoining property or is a public necessity. Mr. Edlin stated that the use is not a public necessity and the use is not in harmony with the declaration of the community, per the homeowner's association.

Mr. Burns provided closing remarks by stating that there has been no expert testimony that this use will affect value of adjoining properties and that the increase in traffic would pose a danger to public safety. He further stated that the applicants have plans to completely comply with the requirements documented in the staff report and will update their Airbnb advertisement, if the use is granted.

With no additional attendees wishing to speak in favor or in opposition of the petition, Mr. McConkey closed the public hearing portion of the meeting at 10:53 am.

Board Discussion and Findings of Fact

Mr. McConkey began board discussion by stating that the board will make its findings based on whether if the property will be used in the way that the application states; the first of the five requirements discussed is whether the proposed development will materially endanger the public health or safety. Mr. Barker stated that testimony given was that the number of cars would not be increased in the driveway of the proposed use, any more than was there when the Nelsons had teenagers living in the home, that water/sewer was addressed in the staff report as a non-issue, and that there are no plans to disrupt soil nor to make changes to structures show that the use will meet this finding. Mr. McConkey stated that the additional use of the two bedrooms/cars will create a traffic issue.

The second finding is that the use will comply with all regulations and standards in the UDO, section 4-74. Mr. Mial stated that the use does meet the standards as the applicants stated that there would be no substantial changes to the exterior, guest stays were stated to be seven days or less, the owners occupy the home when guests are there, and the guests do not have kitchen facilities in the rooms. Mr. McConkey also stated that the septic use would fall under this provision, and that since the proposed use will limit the guests to two per bedroom, the standards are met.

The third finding is that the proposed development will not substantially injure the value of adjoining property or is a public necessity. Mr. Engelken stated that the use is not a public necessity and that there has not been any substantial testimony or evidence that property value was impacted. Mr. McConkey.

The fourth finding is that the proposed development will be in harmony with the area in which it is located. Mr. McConkey stated that the proposed use, if limited to the two adults per the two bedrooms, is a residential use and is in harmony with the surrounding residential uses. Mr. McConkey further stated that whether the use is considered transient or non-transient is a question that must be raised to the respective homeowner's association and board. Mr. Engelken agreed that, looking forward, the use will be in harmony and will not change the character of the surrounding development.

The fifth finding is that the proposed development will be consistent with the Wake County Land Use Plan. Mr. McConkey stated that the staff report did indicated that the proposed plan was consistent.

There being no further discussions regarding this determination, Mr. McConkey asked for a motion.

Motion and Conclusions of Law:

In the matter of PLG-SU-001889-2019, **Mr. Mial** moved that the Board find and conclude that the petition does meet the requirements of Article 19, Section 19-23 of the Wake County Unified Development Ordinance and the special use permit be granted with the recommended staff conditions. The motion to approve is based on board discussion, staff recommendation, and the following findings of fact:

1. **The proposed development will not materially endanger the public health or safety;** with a limit of two adult guests for each of the two bedrooms, the proposed use will not significantly increase traffic in the Subject Property's vicinity and the public health and safety will not be materially endangered. At one point while the Nelson's three now-adult children were still living at home in the residence on the Subject Property each of them had their own car, and Mr. Nelson and Ms. Nelson each had their own car during that time too, for a total of five cars associated with the Subject Property during that time. Since the Nelsons will be limited under the Special Use Permit to offering only two bedrooms for rental in the residence on the Subject Property, with a limit of two adult guests for each of the two bedrooms, there is room in the Subject Property's driveway to park the Nelsons' two cars and to provide the two off-street parking spaces for their guests required by UDO Section 15-10. The limit of two adult guests for each of the two bedrooms will also be acceptable use of the septic system.

Since the Nelsons will not redevelop the Subject Property in connection with its proposed use as a Bed and Breakfast Homestay, the proposed use will not impact sedimentation and erosion control on the Subject Property and will not have any adverse effects on surface waters or groundwater.

2. **The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses;** there would be no substantial changes to the exterior, guest stays were stated to be seven days or less, the owners occupy the home when guests are there, and the guests do not have kitchen facilities in the rooms. Mr. McConkey also stated that the septic use would fall under this provision, and that since the proposed use will limit the guests to two adults per bedroom, the use complies.

If Wake County Planning staff determine that the Nelsons are failing to comply with UDO Section 21-11 by offering more than two of their residence's bedrooms for rental, or are failing to comply with all of the use regulations of UDO Section 4-74 for a Bed and Breakfast Homestay, the Special Use Permit for the Subject Property will be revoked.

3. **The proposed development will not substantially injure the value of adjoining property, or is a public necessity;** No expert testimony or evidence was presented at the quasi-judicial hearing on the issue of whether or not the proposed use on the Subject Property would substantially injure the value of adjoining property.

The proposed Bed and Breakfast Homestay use will be a residential use since only two bedrooms in the residence on the Subject Property will be offered for rental, with a limit of two adult guests for each of the two bedrooms, and since the proposed use is permitted as an accessory use to a residential dwelling pursuant to UDO Section 4-74. The adjoining property are also used for residential purposes.

4. **The proposed development will be in harmony with the area in which it is located;** The surrounding properties are residential use properties and the proposed use will also remain a residential use, and
5. **The proposed development will be consistent with the Wake County Land Use Plan.** The proposed use is consistent with the Wake County Land Use Plan General Classifications Map.

The motion was seconded by Mr. Engelken. The special use permit was granted with a unanimous vote (5-0).

Mr. McConkey called a recess of the Board at 11:25am.

During the recess, Ms. Vodicka requested to be excused from the meeting.

Mr. McConkey called the meeting back to order at 11:36am.

5. **PLG-A-002008-2020 - The petitioner appealed the determination of planning staff, as allowed by Article 19-41 *Appeals of Administrative Decisions*, that his nonconforming mobile home park has lost legal nonconforming status for 17 lease spaces.**

Voting Members (5)

The voting members were identified as: Mr. McConkey, Mr. Mial, Mr. Haq, Mr. Will Barker, and Mr. Engelken

Documentary Evidence

Staff Report, PowerPoint presentation, Petitioner's Appeal Application with supporting documents

Testimony of Staff

Before the case was heard, Wake County Planning staff member, Mr. Geoffrey Pearson, was duly sworn. Mr. Pearson began by introducing himself and the title of the case before the board. Mr. Pearson asked that the Staff Report (Appendix 4), PowerPoint presentation (Appendix 5), the Appeal Application (Appendix 6), be accepted as evidence into the record.

Mr. Pearson stated that this item is an appeal of a zoning staff's decision that a Non-conforming Mobile Home Park has lost legal non-conforming status for 17 lease lots. The petitioner is Scott Overbee and the subject site is located at 4220 Sandcastle Drive, which is located at the intersection of Raynor Rd and White Oak Rd. The parcel consists of 12.09 acres is zoned Residential-40. The property is also located in the Non-Urban Area Resource Conservation Overlay-2.

Mr. Pearson stated that Sanders Mobile Home Park is a legal non-conforming use that existed prior to 1970. On March 4, 1975 a site plan was submitted for Sanders Mobile Home Park that showed 22 lease spaces. The mobile home park was a legal use when it was developed. On December 16, 1996 the Wake County Zoning Ordinance was amended to prohibit mobile home parks in the R-30 Zoning District, thus making Sanders Mobile Home Park a Legal Non-conforming Use. The current owner, Mr. Scott Overbee, purchased the property on June 23, 2009. At the time of purchase there were approximately seven lease spaces occupied with mobile homes, as the remainder of the homes had been removed throughout the years. After purchase, Mr. Overbee removed two additional homes from the property. On October 14, 2019, Mr. Overby was issued a Notice of Violation by Wake County Environmental Services for violating the Wake County Mobile

Home Park Ordinance, which included the requirement of removing three abandoned mobile homes on the property. Mr. Overby inquired about replacing all 22 lease spaces within the park, and on December 4, 2019 Wake County Planning Staff determined that since the remaining 17 lease spaces had not been offered for lease or rental within 12 months of removal, that those lease spaces have lost their legal non-conforming status and could not be released or replaced with new mobile homes. Mr. Overbee submitted an Appeal Application on January 3, 2020. A public hearing notice was placed on the subject property on January 27, 2020.

Mr. Pearson presented text from Article 7, Section 7-12-1 of the UDO, defining a non-conforming use as follows:

“A nonconforming use is a use of land or structures that lawfully existed, or for which a vested right was established, before the adoption or amendment of this ordinance but that fails, by reason of such adoption or amendment, to conform to the use regulations of the zoning district in which the use is located.”

Mr. Pearson presented text from Article 21, Section 21-11 of the UDO, defining a Mobile Home Park as follows:

“any site or tract of land (except a subdivision developed pursuant to this ordinance) in contiguous ownership upon which two or more mobile home spaces are provided for lease or rental only to mobile home occupants.”

Mr. Pearson stated that under Section 7-10-4 of the UDO, any lawful nonconformity that existed on April 17, 2006, may be continued in accordance with the regulations of Section 7-12. He stated that if mobile homes are removed and lease spaces are unoccupied for more than 12 months, then Section 7-12-2(E) applies and the non-conforming use may not be resumed.

Mr. Pearson presented a site plan of the mobile home park from 1975 with 22 lease spaces, an exempt plat map from 2005 with 17 lease spaces, an aerial photos from 1974 showing 22 occupied lease spaces, an aerial photo another from 2010 showing seven occupied lease spaces, another aerial photo from 2013 showing seven occupied lease spaces, and a final aerial photo from 2017 showing 6 occupied lease spaces.

Mr. Pearson stated that Mr. Overbee alleges that he was never informed about the restriction of replacing mobile homes within a nonconforming mobile home park. Mr. Pearson further stated that per Article 19, Section 19-15 of the UDO, the burden of demonstrating proof that an application complies with criteria of the UDO is on the applicant.

Mr. Pearson present five photographs and a video of the current condition of the mobile home park. He noted 17 unoccupied lease spaces, two lease spaces where residents reside, and three lease spaces that have abandoned homes.

Mr. Pearson recommends that, based on evidence, the non-conforming Mobile Home Park has lost legal non-conforming status for 17 lease spaces and the spaces may not be resumed.

Mr. McConkey asked Mr. Pearson the definition of a ‘lease space.’ Mr. Pearson stated that it is a defined area on a parcel that identifies where a mobile home can be placed and usually includes the septic system and any utilities such as a power pole.

Testimony of the Petitioner

Mr. Scott Overbee (77 Eleanor Lane, Garner, NC 27529), property owner of the mobile home park, was duly sworn. Mr. Overbee stated that he purchased the park in 2009 as a retirement investment and project. Prior to purchasing, Mr. Overbee stated that he met with planning staff and consulted them about his plans to spend \$40,000 to demolish the old homes with the purpose of replacing with newer homes. Mr. Overby stated that he was not informed at that time of the 12-month vacancy rule and consequential loss of legal non-conforming status. In October 2019, he and his sons had continued to clean up the park and applied for a permit to place a double-wide trailer on the park but was then denied the permit and told of the 12-month vacancy rule.

Mr. Collins asked Mr. Overbee if the appeal was granted, would he be able to replace all homes on all lots in 12 months. Mr. Overbee stated that he prefers to take his time over the course of 5 years in order to get finances. Mr. Overbee states that he could fill the lots in a year with other people's homes and rent the lots.

Mr. Engelken asked Mr. Pearson if the board upheld staff's decision, would there be an opportunity to rezone the property for conformity. Mr. Pearson stated that it could possibly be a subdivision but with that there are logistical problems, or I could possibly be rezoned as RMH.

Having no other attendees speaking in favor or opposed to the petition, Mr. McConkey closed the public hearing portion of the meeting at 12:15am.

Board Discussion

Mr. Will Barker expressed concern on whether you apply the non-conforming use to the individual spaces or to the parcel as a whole. Mr. Engelken agrees that the non-conforming use applies to the entire property and it has continued to function as a mobile home park.

Mr. Will Barker feels the intention is not to expand into more lease lots, but rather to maintain the non-conforming status for the current amount of spaces.

Mr. McConkey feels that the use applies to each individual lot and sees the purpose of the non-conformity lots is to eventually phase the use out, but allowing these types of uses to cease for a long period of time and then allowing them to function again is not the purpose of the legal non-conforming use in his view.

There being no further discussions, Mr. McConkey asked for a motion.

Motion and Conclusions to Reverse the Planning Staff's Decision:

Based on the applicable Wake County Unified Development Ordinance provisions, and on the evidence submitted in the matter of PLG-A-002008-2020, **Mr. Engelken** moved that the Board find and conclude that the Planning staff's determination is incorrect and must be reversed based on arguments presented and evidence submitted, such that 17 lease spaces within the mobile home park have not lost their legal nonconforming status and can be occupied with new mobile homes.

The motion was seconded by Mr. Will Barker. The Planning staff's determination was reversed by a 3-2 vote, with Mr. McConkey and Mr. Mial dissenting.

6. Planning, Development & Inspections Report

There were no reports.

Mr. McConkey recognized Mr. John Barker for his service with the Board of Adjustment during his term and presented him with a plaque as appreciation.

7. Adjournment

Mr. McConkey adjourned the meeting at 12:26 pm.

=====

REGULAR MEETING
WAKE COUNTY BOARD OF ADJUSTMENT
February 11, 2020

All petitions complete, Brenton McConkey declared the regular meeting
of the Wake County Board of Adjustment for
Tuesday, February 11, 2020 adjourned at 12:26 p.m.

Respectfully Submitted:

A handwritten signature in black ink, appearing to be 'Brenton McConkey', written in a cursive style.

Brenton McConkey
Wake County Board of Adjustment

=====